

REMARKS

Responsive to the requirement for restriction, applicants elect Group I, claims 1 and 9-14, with traverse.

The restriction cannot properly be repeated, because the reference NOVELLINO et al. has a publication date which is later than the priority date of the instant application (June 15, 2003 and November 14, 2002, respectively). Therefore, the conditions laid down in Rule 13.1 PCT et seq. are not fulfilled.

According to Rule 13.2:

Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

The definition of "prior art" is given in Rule 64.1

PCT:

64.1 Prior Art

(a) For the purposes of Article 33(2) and (3), everything made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) shall be considered are provided that such making available occurred prior to the relevant date.

(b) For the purposes of paragraph (a), the relevant date will be:

(i) subject to item (ii), the international filing date of the international application under international preliminary examination;

(ii) where the international application under international preliminary examination validly claims the priority of an earlier application, the filing date of such earlier application.

(emphasis added)

Since NOVELLINO et al. was published after the relevant date as defined in Rule 64.1 (in this case the priority date), it does not constitute prior art to the instant application. Therefore, the peptide of SEQ ID NO: 1 is a special technical feature within the meaning of Rule 13 PCT and the Examiner's finding of lack of unity of invention in view of that reference is groundless.

A certified copy of the priority application was filed with the EPO during the international phase. We enclose in this respect the PCT form confirming this.

In view of the present amendment and the foregoing remarks, therefore, it is believed that this application is in condition for examination as to all the claims therein, and such is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



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**APPENDIX:**

The Appendix includes the following item:

- Form PCT/IB/304

## PATENT COOPERATION TREATY

PCT

NOTIFICATION CONCERNING  
SUBMISSION OR TRANSMITTAL  
OF PRIORITY DOCUMENT

(PCT Administrative Instructions, Section 411)

From the INTERNATIONAL BUREAU

To:

BANFI, Paolo  
 Bianchetti Bracco Minoja S.r.l.  
 Via Rossini, 8  
 I-20122 Milano  
 Italy

|                                                                                 |                                                                             |
|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| Date of mailing (day/month/year)<br>03 March 2004 (03.03.2004)                  |                                                                             |
| Applicant's or agent's file reference<br>SCB 823 PCT                            | <b>IMPORTANT NOTIFICATION</b>                                               |
| International application No.<br>PCT/EP2003/012638                              | International filing date (day/month/year)<br>12 November 2003 (12.11.2003) |
| International publication date (day/month/year)<br>Not yet published            | Priority date (day/month/year)<br>14 November 2002 (14.11.2002)             |
| Applicant<br><b>ISTITUTO NAZIONALE PER LO STUDIO E LA CURA DEI TUMORI et al</b> |                                                                             |

1. By means of this Form, which replaces any previously issued notification concerning submission or transmittal of priority documents, the applicant is hereby notified of the date of receipt by the International Bureau of the priority document(s) relating to all earlier application(s) whose priority is claimed. Unless otherwise indicated by the letters "NR", in the right-hand column or by an asterisk appearing next to a date of receipt, the priority document concerned was submitted or transmitted to the International Bureau in compliance with Rule 17.1(a) or (b).
2. (If applicable) The letters "NR" appearing in the right-hand column denote a priority document which, on the date of mailing of this Form, had not yet been received by the International Bureau under Rule 17.1(a) or (b). Where, under Rule 17.1(a), the priority document must be submitted by the applicant to the receiving Office or the International Bureau, but the applicant fails to submit the priority document within the applicable time limit under that Rule, the attention of the applicant is directed to Rule 17.1(c) which provides that no designated Office may disregard the priority claim concerned before giving the applicant an opportunity, upon entry into the national phase, to furnish the priority document within a time limit which is reasonable under the circumstances.
3. (If applicable) An asterisk(\*) appearing next to a date of receipt, in the right-hand column, denotes a priority document submitted or transmitted to the International Bureau but not in compliance with Rule 17.1(a) or (b) (the priority document was received after the time limit prescribed in Rule 17.1(a) or the request to prepare and transmit the priority document was submitted to the receiving Office after the applicable time limit under Rule 17.1(b)). Even though the priority document was not furnished in compliance with Rule 17.1(a) or (b), the International Bureau will nevertheless transmit a copy of the document to the designated Offices, for their consideration. In case such a copy is not accepted by the designated Office as priority document, Rule 17.1(c) provides that no designated Office may disregard the priority claim concerned before giving the applicant an opportunity, upon entry into the national phase, to furnish the priority document within a time limit which is reasonable under the circumstances.

| <u>Priority date</u>      | <u>Priority application No.</u> | <u>Country or regional Office<br/>or PCT receiving Office</u> | <u>Date of receipt<br/>of priority document</u> |
|---------------------------|---------------------------------|---------------------------------------------------------------|-------------------------------------------------|
| 14 Nove 2002 (14.11.2002) | MI2002A002412                   | IT                                                            | 24 Febr 2004 (24.02.2004)                       |

|                                                                                                                                  |                                                                                            |
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| The International Bureau of WIPO<br>34, chemin des Colombettes<br>1211 Geneva 20, Switzerland<br>Facsimile No. (41-22) 338.89.70 | Authorized officer<br>Patrick VILLECHAISE (Fax 338 8970)<br>Telephone No. (41-22) 338 8906 |
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